

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIDLAND REFINING COMPANY,  
CLEAR WATER TRUCK COMPANY, INC.,  
ROSANN HARPSTER, and  
LEWIS W. WILLIAMS, JR.

Defendants.

Civil Action No.

**CONSENT DECREE WITH RESPECT TO**  
**MIDLAND REFINING COMPANY, INC., CLEAR**  
**WATER TRUCK COMPANY, INC., AND ROSANN HARPSTER**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIDLAND REFINING COMPANY,  
INC., CLEARWATER TRUCK  
COMPANY, INC., and ROSANN  
HARPSTER

Defendants.

A. The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency, has filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended.

C. In accordance with the National Contingency Plan and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Kansas on October 6, 1999 of negotiations with potentially responsible parties regarding the implementation of the remedial

design and Remedial Action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior on October 6, 1999 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register, 57 Fed. Reg. 47180 (October 14, 1992).

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced on September 15, 1994 a Remedial Investigation and Feasibility Study for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA, with cooperation from the State, issued a Remedial Investigation Report to the public on July 14, 1999, and EPA, with cooperation from the State, completed the final Feasibility Study Report on September 29, 1999.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the Feasibility Study Report and of the proposed plan for Remedial Action on July 14, 1999, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for Remedial Action. A

copy of the transcript of the public meeting is available to the public as part of the administrative record on which the Regional Administrator based the selection of the response action.

J. EPA's decision regarding the Remedial Action to be implemented at the Site is embodied in a final Record of Decision executed on September 29, 1999. The State reviewed, provided input for, and concurred with the ROD. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. EPA will implement the Remedial Action. The purpose of this Consent Decree is to provide for Defendants' payment of their alleged share of the cost of the Remedial Action and the United States' other response costs.

L. The United States has reviewed the Financial Information submitted by Defendants to determine whether they are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Defendants are able to pay the amounts specified in Section VI (Payment of Response Costs).

M. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of this Court or to venue in this District. Defendants shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding on the United States and on Defendants and their heirs, successors, and assigns. Any change in ownership or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Clearwater" shall mean the Clearwater Truck Company, Inc.

- c. "Consent Decree" shall mean the body of this Consent Decree and all attached appendices. In the event of a conflict between the body of this Consent Decree and the attached appendices, the body of this Consent Decree shall control.
- d. "Corporate Defendants" shall mean Clearwater and Midland.
- e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.
- f. "Defendant" shall mean Clearwater, Midland, or Rosann Harpster.
- g. "Defendants" shall mean Clearwater, Midland, and Rosann Harpster.
- h. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- i. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- j. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- k. "Financial Information" shall mean those financial documents identified in Appendix A.
- l. "Individual Defendant" shall mean Rosann Harpster.
- m. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The

applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

- n. "Midland" shall mean Midland Refining Company, Inc.
- o. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.
- p. "Parties" shall mean the United States and Defendants.
- q. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1999, by the Superfund Division Director, EPA Region 7, or his delegate, and all attachments thereto.
- r. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision.
- s. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- t. "Site" shall mean the 57<sup>th</sup> and North Broadway Superfund Site, encompassing approximately 300 acres, located generally south of 58<sup>th</sup> Street and north of 46<sup>th</sup> Street and west of Chisholm Creek Parkway and east of Armstrong Drive in Wichita, Sedgwick County, Kansas, as depicted generally on the map attached as Appendix B.
- u. "State" shall mean the State of Kansas.
- v. "United States" shall mean the United States of America.
- w. "USAO" shall mean the Office of the United States' Attorney for the District of Kansas.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Defendants to make cash payments to address their alleged liability for the Site as provided in the Covenants Not to Sue by United States in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

## **VI. PAYMENT OF RESPONSE COSTS**

5. Within 30 days of entry of this Consent Decree, Corporate Defendants shall pay to the United States the sum of \$5,000. Additionally, on each anniversary date of the first payment for the succeeding four years, Corporate Defendants shall pay to the United States the sum of \$6,000. In total, this Paragraph requires Corporate Defendants to make \$29,000 in payments. Corporate Defendants shall make these payment to the United States as provided in Paragraph 7 on or before the applicable due date.

6. Within one year of entry of this Consent Decree, Individual Defendant shall pay to the United States the sum of \$50,000. Corporate Defendants shall make the payment to the United States as provided in Paragraph 7 on or before the applicable due date.

7. Payments pursuant to Paragraphs 5 and 6 of this Consent Decree shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOJ account in accordance with current EFT procedures, referencing the USAO File Number to be provided by the USAO, EPA Region and Site Spill Identification Number 07EF, and DOJ Case Number 90-11-3-1737. Payments shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the USAO after the Consent Decree is entered. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.



8. At the time of each payment, the Defendant or Defendants making the payment shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and

to:

John Anderson, PLMG/RFMB  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

9. The total amount to be paid by Defendants pursuant to this Consent Decree shall be deposited in the 57<sup>th</sup> and North Broadway Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance any response actions at or in connection with the Site.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

10. Interest on Late Payments. If any Defendant fails to make any payment under Section VI (Payment of Response Costs) by the required due date, all remaining installment payments shall become due immediately upon such failure, and Interest shall begin to accrue on any unpaid amounts and shall continue to accrue until the total amount due has been received.

11. Stipulated Penalty. If any payments due to the United States under this Consent Decree are not *received* by the required date, Defendants shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 10, \$50 per day that such payment is late. Defendants are jointly and severally liable for all stipulated penalties. Stipulated penalties are due and payable within 30 days of any Defendant's receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made

payable to "EPA Hazardous Substance Superfund" and reference the 57<sup>th</sup> & North Broadway Superfund Site, EPA Region VII and the Site/Spill Identification Number 07EF, the DOJ Case Number 90-11-3-1737, and the name and address of the party making payment and shall be mailed to:

Mellon Bank  
EPA - Region VII Superfund  
FNMG Section, Post Office Box 360748M  
Pittsburgh, Pennsylvania 15251

Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be mailed to the United States at the addresses specified in Paragraph 29 of this Consent Decree and to:

John Anderson, PLMG/RFMB  
United States Environmental Protection Agency  
Region VII, 901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Penalties shall accrue as provided above regardless of whether EPA has notified any Defendant of the violation or made a demand for payment, but need only be paid on demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States must bring an action to collect any payment required by this Consent Decree, the Defendant or Defendants against whom the United States brings the suit shall reimburse the United States for all expenses of such action including, but not limited to, the expense of attorney time.

13. Payments made under Paragraphs 10-12 shall be in addition to any other remedies or sanctions available to the United States by virtue of any Defendant's failure to make timely payments required by this Decree.

14. Notwithstanding any other provision of this Section, the United States, in its unreviewable discretion, may waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree, and may waive the application of any part of Paragraph 10. Payment of stipulated penalties shall not excuse any Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANTS NOT TO SUE BY UNITED STATES**

15. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, with regard to the Site. With respect to the present and future liability of Corporate Defendants, this covenant shall take effect upon receipt by EPA of the first payment required by Paragraph 5. With respect to the present and future liability of Individual Defendant, this covenant shall take effect upon receipt by EPA of the payment required by Paragraph 6. The United States' covenants not to sue are conditioned upon the complete and satisfactory performance by Defendants of all obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any amount due under Section VII (Failure to Comply with Consent Decree). The covenants not to sue are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Defendants. If the Financial

Information is subsequently determined by EPA to be false or, in any material respect inaccurate, all Defendants shall forfeit all payments made pursuant to this Consent Decree and these covenants not to sue and the contribution protection in Paragraph 22 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from a Defendant's false or materially inaccurate information. These covenants not to sue extend only to Defendants and do not extend to any other person or entity.

#### **IX. RESERVATION OF RIGHTS BY UNITED STATES**

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 15. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendants with respect to:

- a. liability for failure of Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- d. liability, if any, for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

17. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Defendants, or the financial certification made by Defendants in Paragraph 28, is false or, in any material respect, inaccurate.

#### **X. COVENANTS BY SETTLING DEFENDANTS**

18. Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractor or employees, with respect to the Site or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 20 (Waiver of Claims) and Paragraph 24 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16 (c) - (e), but only to the extent that Defendant's or Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable

reservation.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

20. Waiver of Claims. Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Defendant or Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

#### **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

21. Except as provided in Paragraph 20, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 20, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they

may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party to this Consent Decree.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against one or more Defendants coming within the scope of such reservations.

23. Defendants agree that, with respect to any suit or claim for contribution brought by one or more of them for matters related to this Consent Decree, they will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Defendants also agree that, with respect to any suit or claim for contribution brought against one or more of them for matters related to this Consent Decree, they will notify EPA and DOJ in writing within 15 days of service of the complaint or claim. In addition, they shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other

appropriate relief relating to the Site, no Defendant shall assert or maintain any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, claim preclusion, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by United States set forth in Section VIII.

## **XII. SITE ACCESS**

25. Commencing on the date of lodging of this Consent Decree, if the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by one or more Defendants, Defendants shall:

- a. provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property owned or controlled by the Defendant or Defendants to which access is required for the implementation of response actions for the Site including, but not limited to:
  - i. Monitoring investigation, remedial or other activities at the Site;
  - ii. Verifying any data or information submitted to the United States;
  - iii. Conducting investigations relating to contamination at or near the Site;
  - iv. Obtaining samples;
  - v. Assessing the need for, planning, or implementing response actions at or near the Site;
  - vi. Assessing compliance with this Consent Decree; and



vii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and

b. refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site.

### **XIII. RETENTION OF RECORDS**

26. Until 10 years after the entry of this Consent Decree, Defendants shall preserve and retain all records and documents now in their/her possession or control or which come into Defendant or Defendants' possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site.

27. After the conclusion of this document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA. Defendant or Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant or Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no

documents, records, or other information created or generated pursuant to the requirements of this or any other Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only.

28. Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, each and all of them have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States regarding the Site, and that each and all of them have fully complied with any and all EPA requests for information regarding the Site and their financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

b. submitted to the United States Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Defendants execute this Consent Decree.

#### **XIV. NOTICES AND SUBMISSIONS**

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute

complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Defendants, respectively.

As to the United States (DOJ and EPA):

As to DOJ:

Bruce S. Gelber  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Re: DJ No. 90-11-3-1737

and

Paul R. Stokstad  
Trial Attorney, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Re: DJ No. 90-11-3-1737

As to EPA:

Steven L. Sanders  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Steven Kinser  
EPA Project Manager  
United States Environmental Protection Agency  
Region VII

901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

As to Defendants:

Linda S. Parks  
Hite, Fanning & Honeyman L.L.P.  
200 West Douglas Ave., Suite 600  
Wichita, Kansas 67202

**XV. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVI. INTEGRATION/APPENDICES**

31. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of financial documents submitted to the United States by Defendants.

“Appendix B” is a map of the Site.

**XVII. MODIFICATIONS**

32. No material modifications shall be made to this Consent Decree without the written approval of the United States, Defendants, and this Court. Modifications that are not material may be made by written agreement between the United States and Defendants.

## **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

33. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

## **XIX. SIGNATORIES/SERVICE**

35. Defendants and the Principal Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

36. Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

37. Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of them with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the

Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XX. FINAL JUDGMENT**

38. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

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United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the 57<sup>th</sup> and North Broadway Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: Jan. 13, 2006

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date: Jan. 3, 2006

ROBERT E. MAIER, JR.  
Assistant Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4241

ORIGINAL SIGNATURE PAGES ARE ON FILE



## **Appendix A: Financial Documents Received by the United States from Defendants**

1. US Corporation Income Tax Return for Clearwater Truck Company, Inc., 1997 to 2000
2. Kansas Corporate Annual Report for Midland Refining Company, Inc., 2000
3. Balance sheet of Clearwater Truck Co., Inc. as of December 31, 2000 with cover letter from James L. Ireland dated May 24, 2001
4. Balance sheet of Midland Refining Co., Inc. as of December 31, 2000 with cover letter from James L. Ireland dated May 24, 2001
5. Balance sheet of Clearwater Truck Co., Inc. and subsidiary as of December 31, 1998 with cover letter from James L. Ireland dated April 24, 2000
6. Balance sheet of Clearwater Truck Co., Inc. and subsidiary as of December 31, 1997 with cover letter from James L. Ireland dated April 24, 2000
7. US Individual Income Tax Returns for Rosann Harpster, 1997 to 1999
8. Kansas Individual Income Tax Returns for Rosann Harpster, 1997 to 1999
9. Mortgage deed dated October 27, 1981 between First Farm and Ranch Mortgage and Claude and Rosann Harpster for \$540,000
10. Mortgage deed dated June 17, 1999 between Rosann Harpster and Clearwater Truck Company for \$55,000 and accompanying "Secured Promissary Note"
11. "Partial Release—Mortgage" from Farm Credit Services dated April 23, 1992
12. "Partial Release—Mortgage" from Farm Credit Services dated January 3, 1997
13. "Partial Release—Mortgage" from Farm Credit Services dated May 5, 1997
14. Appraisal letter from Matt Eck Real Estate, Inc. to Rosann Harpster dated April 30, 1999
15. Letter dated October 25, 2001 from Linda Parks to Mark L. Dennett of INTRUST Bank
16. Letter dated November 1, 2001 from Mark L. Dennett of INTRUST Bank to Rosann Harpster
17. US Form O8D-500, "Financial Statement of Debtor" signed by Rosann Harpster and dated December 21, 2000
18. "Rosann Harpster, Statement of Personal Financial Condition, July 31, 2000"
19. Letter dated July 8, 2002 from Linda S. Parks to Paul Stokstad

## **Appendix B: Map of Site**

